(10) 04-8996

No.

In the Supreme Court of the United States

PAUL GREGORY HOUSE,
Petitioner,

v.

RICKY BELL, Warden,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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Counsel of record for Petitioner

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CAPITAL CASE

QUESTIONS PRESENTED

Petitioner Paul House's compelling new evidence of innocence sharply split the full *en banc* Sixth Circuit Court of Appeal. A bare majority of eight judges determined that he presented a colorable claim of innocence, but not a sufficiently strong one that allowed either for review of his underlying constitutional claims pursuant to *Schlup v. Delo*, 513 U.S. 298 (1995) or his free-standing innocence claim pursuant to *Herrera v. Collins*, 503 U.S. 390 (1993). Six dissenters determined that House's new evidence of innocence was so persuasive and compelling that it easily satisfied *Schlup*, met Justice White's demanding innocence standard in *Herrera*, and warranted his immediate release from prison. The seventh dissenter argued that the new evidence was sufficient to warrant habeas relief and a new trial where a jury could consider all the evidence. Two questions arise from this outcome that warrant this Court's review:

1. Did the majority below err in applying this Court's decision in *Schlup v. Delo* to hold that Petitioner's compelling new evidence, though presenting at the very least a colorable claim of actual innocence, was as a matter of law insufficient to excuse his failure to present that evidence before the state courts – merely because he had failed to negate each and every item of circumstantial evidence that had been offered against him at the original trial?

2. What constitutes a "truly persuasive showing of actual innocence" pursuant to *Herrera v. Collins* sufficient to warrant freestanding habeas relief?

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OPINIONS BELOW

The *en banc* opinion of the court of appeals (App. 1) that is the subject of this petition is published at 386 F.3d 668. The earlier *en banc* opinion (App. 47) is reported at 311 F.3d 767. The panel opinion (App. 66) is reported at 283 F.3d 737. The memorandum opinion of the district court (App. 86) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 6, 2004. No further rehearing was sought. Mr. Justice Stevens extended the time for filing a petition for writ of certiorari to and including March 5, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Article I, Section 9, clause [2] states, in relevant part: "The privilege of the Writ of Habeas Corpus shall not be suspended.."

The Fourteenth Amendment to the United States Constitution states, in relevant part: "Nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ."

28 U.S.C. § 2254. State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that —

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

STATEMENT OF THE CASE

Introduction

Powerful new evidence of innocence, including DNA evidence, proves that petitioner Paul House was wrongly convicted of the murder of his former neighbor, Carolyn Muncey. Yet he remains on death row, having been denied review of his underlying meritorious constitutional claims by the barest possible majority of an *en banc* Court of Appeals, which did so only by misapplication of this Court's decisions in *Schlup v. Delo* and *Herrera v. Collins*.

In 1986, the district attorney general of rural Union County, Tennessee, successfully argued to twelve of that county's residents that Paul Gregory House brutally beat Carolyn Muncey to death after luring her to a remote area near her home and attempting to sexually assault her. The prosecution argued that Mr. House's semen was found on the underwear and nightgown of the murder victim, Carolyn Muncey; that blood shed from Mrs. Muncey's body during the murder was found on Mr. House's blue jeans; that Mr. House was seen a day later surveying the location where Ms. Muncey's body was found; that Mr. House did not tell law enforcement about a one hour and fifteen minute absence from his girlfriend's trailer that night; and that Mr. House shared a "low voice" with a person who had spoken to Carolyn Muncey sometime on the evening she was killed. That evidence, the prosecution argued, proved beyond a reasonable doubt that on the night of July 13, 1985, Paul Gregory House murdered his neighbor, a young housewife and mother of two, in the course of sexually assaulting her.

When those twelve men and women returned from deliberations convinced of Mr.

House's guilt, however, not one of them knew that the frailty – and more often than not, outright falsity – of virtually every significant piece of evidence presented to them. Not one juror knew that modern DNA testing would positively *exclude* Mr. House as the source of the damning semen stains on Ms. Muncey's clothing. None of them heard the Assistant Chief Medical Examiner of the State of Tennessee, Dr. Cleland Blake – a man who himself had put more than his share of men on Tennessee's death row and in its prisons – testify unequivocally and without hesitation that the blood stains on Mr. House's jeans came from blood originally contained in the four sample tubes collected during Ms. Muncey's autopsy, and not from the blows which caused her death. The jurors did not hear the un-controverted testimony or see the indisputable photographic evidence showing that at least three-fourths of the contents of one of these samples tubes was missing and could not be accounted for – providing powerful support for Dr. Blake's scientific opinion that the blood on the jeans was actually spilled from those tubes long after her death. They did not see the aerial photographs proving conclusively that the only place Mr. House was seen the day after the murder was walking toward the Muncey home trying to assist the victim's husband in the search for his missing wife.

Nor did a single person emerging from that jury room hear about the powerful evidence now uncovered which points convincingly to the victim's abusive husband, Herbert Muncey Jr., as the true perpetrator. The jurors did not hear about Mr. Muncey's long history of beating his wife or his recent threats to "get rid of her one way or another," how he had lied to law enforcement about never seeing his wife after he left home on the morning she was murdered, and tried to fabricate an alibi for himself the night she was killed, or how an eyewitness saw him hit his wife again only hours before her death. Nor did the jurors know about his tearful

confessions to two of his friends - witnesses with no motive whatsoever to falsely implicate him -- that he had, in fact, later that same night committed the murder for which Paul Gregory House remains on death row. In short, the jury did not hear the truth.

Now, almost two decades later, Paul Gregrory House, an innocent man, cleared by DNA evidence, other exculpatory scientific evidence, indisputable physical evidence, and multiple eyewitness accounts, waits in a prison just outside of Nashville, Tennessee for a jury to hear the evidence in its entirety. He remains there despite the fact that eight Judges of the United States Court of Appeals for the Sixth Circuit, all of whom agree that Mr. House has established a "colorable claim of actual innocence," misinterpreted this Court's precedents to demand that he "do more" before they will even consider the patent constitutional violations which led to this manifest injustice. He remains on death row despite the fact that the six remaining Judges of that same court -- having themselves been wholly convinced of Mr. House's actual innocence -- logically concluded that no rational juror could ever vote to convict him of capital murder beyond a reasonable doubt, and called for his immediate release. And he remains on death row despite the fact that a seventh Circuit Judge concluded that, at the very least, the case poses a genuine "mystery" requiring a new trial by jury. Because this Court's precedents clearly provide an avenue of relief to a habeas Petitioner who offers such a compelling showing of actual innocence, yet the Circuits are both split and confused as to the standards they must apply in such cases, this Court should grant the Writ.

State Court Proceedings: The crime and its investigation

This case arises from Union County, a small rural community in east Tennessee, and concerns the beating death of Carolyn Muncey, the mother of two children, and wife of Hubert